

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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| Depositors Insurance Company, Plaintiff, vs. D.E.S.Water Conditioning of Murray County, Inc. d/b/a Culligan Water Conditioning of Murray County, Inc., Defendant. | Court File No. <u>COMPLAINT</u> JURY TRIAL DEMANDED |
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Plaintiff, as for its Complaint against Defendant, states and alleges as follows:

IDENTIFICATION OF PARTIES

1. At all times material herein, Depositors Insurance Company (“Depositors”) is a company incorporated under the laws of the State of Iowa, with its principle place of business located at One West Nationwide Plaza, Columbus, OH 43215.
2. Upon information and belief, at all times material herein, Defendant D.E.S.Water Conditioning of Murray County, Inc. d/b/a Culligan Water Conditioning of Murray County, Inc., (“D.E.S.”) is a corporation incorporated under the laws of the State of Minnesota with its principle place of business located at 2122 Maple Avenue, Slayton, Minnesota and is duly authorized to, and does conduct business in the State of Minnesota.

JURISDICTION AND VENUE

3. The Court has diversity jurisdiction under 28 U.S.C. § 1332, in that this is a civil action wherein the amount in controversy exceeds the sum of \$75, 000.00, exclusive of interest

and costs and is between citizens of different states.

4. Venue is proper because D.E.S. resides and conducts business in this district within the contemplation of 28 U.S.C. § 1331 and the subject loss took place in this district.
5. That at all times material herein, Depositors insured James T. Dean, the owner of a seasonal residence property located at 38 Lakeview Dr., Slayton, MN (“Dean Seasonal Residence”) under a Homeowner’s insurance policy.

FACTS

6. That on or about February 18, 2018 a “SharkBite connector” plumbing fitting used to install a Culligan brand water softener failed due to incompatible plumbing fittings and flooded the first floor of the Dean Seasonal Residence, causing damage. High levels of moisture vapor were then moved by the forced air heating system from the first floor to the second floor of the Dean Seasonal Residence, causing additional damage.
7. That D.E.S. installed the Culligan brand water softener using a SeaTech fitting made of thermal plastic and a “SharkBite connector” on or about 2009.
8. That the SharkBite connector failed because it is not approved for use with thermal plastic fittings and over time the “teeth” of the SharkBite connector installed by D.E.S. were able to penetrate the too soft and too thin thermal plastic, which caused the teeth to straighten and eventually turn outward to the point where they were no longer able to restrain the thermal plastic SeaTech fitting to the SharkBite connector.
9. That D.E.S.’s installation of two incompatible plumbing fittings was the direct and proximate cause of the water damage occurring at the Dean Seasonal Residence in an amount in excess of \$361,665.00.

10. As That as a direct and proximate result of the actions of D.E.S., Depositors was obligated to pay its insured, James T. Dean, an amount in excess of \$361,665.00 in satisfaction of damage and/or other claims arising under its insurance policy and by virtue of said payments, is subrogated to the rights of its insured.

COUNT ONE-NEGLIGENCE

11. Plaintiff realleges the paragraphs set forth hereinabove and incorporates said paragraphs herein by reference.
12. That D.E.S. owed a duty to use proper and acceptable fittings in conjunction with the installation of a Culligan brand water softener at the Dean Seasonal Residence, and negligently breached such duty as set forth above, which was the direct and proximate cause of the damages described hereinabove.

WHEREFORE, Plaintiff Depositors prays for judgment against Defendant D.E.S. in an amount in excess of \$361,665.00 with prejudgment interest thereon, their costs and disbursements herein, and for such other and further relief as the Court deems just and equitable.

Date: June 12, 2019

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